

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JUSTIN K. BORDEN, #282077,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:19-cv-437-WKW-SMD
)	[WO]
ALABAMA DEPARTMENT)	
OF CORRECTIONS, <i>et al.</i> ,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Pro se Plaintiff Justin K. Borden, an inmate currently confined at the Bullock Correctional Facility, brings this action under 42 U.S.C. § 1983. (Doc. 1). On June 24, 2019, the Court found several deficiencies in Plaintiff's Complaint and ordered Plaintiff to file an amended complaint by July 10, 2019. *Order* (Doc. 4) p. 4. The Court cautioned Plaintiff that failure to file an amended complaint would result in a recommendation that this case be dismissed without prejudice. *Id.* at 7. To date, Plaintiff has failed to file an amended complaint.

A federal district court has the inherent power to dismiss a case *sua sponte* for failure to prosecute or obey a court order. *See, e.g., Link v. Wabash R.R. Co.*, 370 U.S. 626, 629–30 (1962); FED. R. CIV. P. 41(b). The Eleventh Circuit has made clear that “dismissal is warranted only upon a ‘clear record of delay or willful contempt and a finding that lesser sanctions would not suffice.’” *Mingo v. Sugar Cane Growers Co-Op of Fla.*, 864 F.2d 101, 102 (11th Cir. 1989) (per curiam) (emphasis omitted) (quoting *Goforth v. Owens*, 766 F.2d

1533, 1535 (11th Cir. 1985)). Here, the undersigned finds that Plaintiff has willfully failed to file an amended complaint. And considering Plaintiff's disregard for orders of this Court, the undersigned further finds that sanctions lesser than dismissal would not suffice.

Accordingly, the undersigned Magistrate Judge RECOMMENDS that this case be DISMISSED without prejudice. It is ORDERED that the parties shall file any objections to this Recommendation on or before **August 5, 2021**. A party must specifically identify the factual findings and legal conclusions in the Recommendation to which each objection is made; frivolous, conclusive, or general objections will not be considered. Failure to file written objections to the Magistrate Judge's findings and recommendations in accordance with the provisions of 28 U.S.C. § 636(b)(1) shall bar a party from a de novo determination by the District Court of legal and factual issues covered in the Recommendation, and waives the right of the party to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); 11TH CIR. R. 3-1; *see also Stein v. Lanning Secs., Inc.*, 667 F.2d 33 (11th Cir. 1982); *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc).

DONE this 22nd day of July, 2021.

A handwritten signature in black ink, appearing to read "Stephen M. Doyle", written over a horizontal line.

Stephen M. Doyle
CHIEF U.S. MAGISTRATE JUDGE